



BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
VALLEJO ELECTRIC LIGHT AND POWER COMPANY)

Appearances:

For Appellant: C. G. Uhlenberg, Certified Public Accountant

For Respondent: Frank M. Keesling, Franchise Tax Counsel

O P I N I O N

This appeal is made pursuant to Section 25 of the Bank and Corporation Franchise Tax Act (Chapter 13, Statutes of 1929, as amended) from the action of the Franchise Tax Commissioner in overruling the protest of the Vallejo Electric Light and Power Company to his proposed assessment of an additional tax in the amount of 3908.04 for the year ended December 31, 1935, based upon the income of the company for the year ended December 31, 1934.

In its return of income for the year ended December 31, 1934 the Appellant deducted from gross income the sum of \$22,700.98 as a bad debt. This amount represented two \$7,500 one year notes of Sophie Casper, dated July 10, 1928, and November 1, 1928, respectively, an open account of \$3,709.33 representing cash advances to Sophie Casper and accrued interest on the notes of \$3,991.65. Sophie Casper died in April, 1934, the Appellant's claim against her estate for the amount of the indebtedness being disallowed in 1934 on the ground that the entire indebtedness became barred by the statute of limitations in 1933.

The only question presented by this appeal is whether the Appellant acted reasonably in ascertaining that the indebtedness became worthless during 1934 or whether, as the Commissioner contends, the indebtedness actually became worthless prior to 1934 and the Appellant could not reasonably have ascertained that it became worthless during that year,

While it is unquestionably true that the mere running of the statute of limitations in 1933 does not conclusively establish that the Appellant could not reasonably ascertain that the indebtedness became worthless during a subsequent year, the running of the statute does place upon it the burden of establishing that it had substantial reason to believe that it might thereafter nevertheless receive payment. Duffin v. Lucas, 55 F. (2d) 786. The Appellant, realizing that this burden is upon it, has offered evidence to show the reasonableness of its action. It has sought to establish that the debtor, Sophie Casper, was ill about the time that the notes and account became outlawed and that it was deemed inadvisable to approach her on financial matters, that Appellant's president, who was the son of the

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debtor, had intended to obtain a new note from Mrs. Caspter, but that due to his death late in 1933, the note was not executed and that the debtor was at all times prior to her death able and willing to satisfy the indebtedness.

We are of the opinion, however, that the evidence offered by the Appellant is not sufficient to meet the burden resting upon it. Considering the amount of the indebtedness, the length of time which elapsed between the incurring of the indebtedness and the time at which it was ascertained to be worthless, the fact that there was no showing of an attempt to obtain a new note prior to the running of the statute of limitations in 1933 and the various factors relating to the ownership of the capital stock of the Appellant and the relationship between the debtor and the officers and stockholders of Appellant, we are unable to conclude that the Commissioner erred in holding that the Appellant could have reasonably ascertained that the indebtedness became worthless prior to 1934. We believe, accordingly, that the action of the Commissioner in disallowing the deduction of the indebtedness as a bad debt in the Appellant's return of income for the year ended December 31, 1934, and in overruling the Appellant's protest with respect to that action should be sustained.

O R D E R

Pursuant to the **views expressed** in the opinion of the Board on file in this proceeding, and good cause **appearing** therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, that the action of Chas. J. **McColgan**, Franchise Tax Commissioner, in overruling the protest of the Vallejo Electric Light and Power Company, a corporation, to a proposed assessment of an additional tax in the amount of \$908.04 for the year ended December 31, 1935,, based upon the income of said company for the yearended **December '31, 1934**, pursuant to Chapter 13, Statutes of 1929, as amended, be and the same is hereby sustained.

Done at Sacramento, California, this 10th day of **March, 1938**, by the State **Board of Equalization**.

R. E. Collins, Chairman
Fred E. Stewart; Member
Jno. C. Corbett, Member

ATTEST: Dixwell L. Pierce, Secretary